IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1073 OF 1987

The State of Maharashtra,
through the Special Land
Acquisition Officer, Alibag, .. Appellants.

Vs

Khandu Lakshman Telange,
since deceased through his
legal heirs:

1. Ram Khandu Telange
2. Smt.Manibai Tukaram Bhatrud
3. Anibai Dattu Gajmal
4. Smt.Janabai Bhau Pawar
5. Smt.Anandibai Hiru Favade
6. Smt.Sindu Vishnu Shinde
7. Smt.Meena Pandharinath Shinde
8. Nalini Anant Padwal
9. Kalabai Chandrakant Jadhav .. Respondents.

Mr A.R.Patil, AGP, for the appellants.
Mr P.S.Dani, for the respondents.

CORAM : D.B.BHOSALE,J.
DATE : 29.11.2006

ORAL JUDGMENT:

1. This appeal by the appellants-State of Maharashtra is directed against the judgment and order dated 5.9.1986, by which the learned Civil Judge, Senior Division, Alibag, has allowed the Land Acquisition Reference No.83 of 1982.

2. The Special Land Acquisition Officer, Alibag,

District-Raigad, acquired the land totalling 1 Hector, 54.8 Ares, including the land of the respondents-claimants admeasuring 39.2 Ares, from survey no.30 situate at Khopali, Taluka-Khalapur, District-Raigad. The land was acquired for public garden at Khapoli, in view of the reservation under the Town Planning Scheme, by issuing notification dated 8.7.1976 under section 126(4) of the Maharashtra Regional and Town Planning Act (for short, "the MRTP Act") read with section 6 of the Land Acquisition Act, (for short, "the Act"). The notice under section 9 of the Act inviting the objections was issued on 3.12.1976. The award under section 11 was passed on 29.1.1982, under which the claimants were awarded Rs.20,662.52 by way of compensation. The claimants received the said amount under protest and thereafter filed an application under section 18 of the Act on 9.3.1982. In the reference application, the claimants claimed compensation at the rate of Rs.1,40,000/- per acre. The court below allowed the reference application and awarded compensation at the rate of Rs.30,000/- per acre and directed to pay Rs.29,400/- plus 12 percent additional compensation and 30 percent solatium, totalling Rs.61,152/- to the claimants. After deducting the amount received by the claimants, under the impugned order, they are entitled for additional compensation of

Rs.40,490.00.

3. Mr Patil, learned AGP for the appellants, assailed the impugned judgment on three grounds. Firstly, on the ground that the proceedings in the present case were commenced prior to 24.9.1984 and, therefore, unamended provisions contained in section 25(2) of the Act would apply and under that provision unless the claimant had filed/made objections/claim under section 9 of the Act, he was not entitled to seek enhancement of the compensation by filling reference under section 18 of the Act. The claimants, in our case, in response to the notice under section 9 of the Act had not made any claim and, therefore, in view of the unamended provisions of section 25(2) of the Act, they are not entitled to claim more compensation than what had been awarded by the Land Acquisition Officer. In support of this contention, he placed heavy reliance upon the judgment of the Division Bench of this court in **State of Maharashtra Vs. Govind Goma Govari and ors, 2006 (2) Mh.L.J. 55**. Secondly, he submitted that the claimants did not produce a single sale instance on record in support of their claim and in the absence thereof the court below has committed grave error of law in awarding the enhanced compensation, and lastly, he submitted that in view of the settled position in law,

as settled by the Apex Court in **Kashibai Bhikabai and ors Vs Spl.Land Acquisition Officer, and Anr, 2002 (2) SCC 605,** the claimants were not entitled for additional compensation at the rate of 12 percent as provided under section 23 (1-A) of the Act.

4. In reply to the arguments advanced by Mr Patil, learned AGP for the appellants, Mr Dani, learned counsel for the claimants, invited my attention to the award to contend that the court below has rightly observed in paragraph 8 of the judgment that the claimants had raised/made objections/claim immediately after receipt of the notice under section 9 of the Act. He, therefore, submitted that the judgment of this court in **Govind Goma Govari case (supra)** has no application to the facts of present case. Insofar as the sale transactions are concerned, Mr Dani submitted that the claimants have examined two witnesses and through them, have brought sufficient material on record and on the basis thereof the court below has rightly enhanced the compensation to Rs.30,000/- per acre and it needs no interference in the appeal. Mr Dani, in response to the last submission of Mr Patil, fairly conceded that in view of the judgment of the Apex Court in **Kashibai Bhikabai case (supra),** the claimants are not entitled for additional compensation at the rate of 12 percent as

provided under section 23(1-A) of the Act.

5. At the outset, I would like to consider the first submission advanced by Mr Patil, learned AGP. It is true, as observed by the Division Bench in the **State of Mahrashtra Vs. Govind Goma Govari** (supra) that in relation to the land acquisition proceedings which had commenced prior to 24.9.1984 by issuance of the notice under section 4 of the Land Acquisition Act and in a given case under section 126 (4) by the MR & TP Act read with section 6 of the Act, the unamended provision of section 25(2) of the Act would apply, and therefore, in terms of the said unamended section 25(2), when the claimants had either refused to make any claim or had omitted to make any claim in answer to section 9 notice without sufficient reason to the satisfaction of the reference court, the amount which could be awarded by the reference court cannot exceed the amount awarded by the Land Acquisition Officer. It is thus clear, that exercise of right to claim compensation by the claimants was absolutely necessary in answer to notice under section 9(3) of the Act in order to enable the claimants to claim and for the court to adjudicate such claim for enhancement of compensation, and only upon the satisfactory explanation for such failure or omission on the part of the claimants, the court could have

proceeded to adjudicate such claim for enhancement.

6. In the present case, therefore, it will have to be examined whether the claimants had made claim for higher compensation on receipt of the notice under section 9(3) of the Act. The court below in paragraph 8 has categorically observed that the claimants had made claim immediately on receipt of the notice under section 9(3)of the Act. In the cross-examination the claimant's witness claim that they had raised/made the objection/ claim in response to the notice under section 9(3). I perused the award and in particular paragraph 3 thereof wherein it is clearly reflected that the claimants had made the claim in response to the notice under section 9(3) of the Act. The court below has rightly taken this factual aspect, as reflected in the award, into consideration I do not find any error in the judgment of the court below insofar as this submission of the appellants is concerned.

7. That takes me to consider the second submission of the learned AGP that no sale instances were produced on record by the claimants in support of their claim of enhancement of compensation. It is true that no sale instances were produced on record by the claimants or their witnesses. However, though no documentary

evidence was produced on record, the sale instances quoted by the witnesses in their oral testimonies were not challenged as false. It appears that the sale instances quoted by the witnesses in their testimonies were challenged on the ground that they cannot be considered since they were post notification sale instances and that they were with regard to the properties which were far away from the acquired property. The court below, while dealing with these submission, by relying upon the judgment of this court reported in **Chindha Vithal Sonawane Vs. Spl. Land Acquisition Officer, 1975 Mh. L. J 469**, rejected the contention of the appellants. In this judgment, it is observed that "the post notification sale instances cannot be overlooked and cannot be discarded merely because they are effected 2-3 years after the relevant date". For determination of the compensation there cannot be any straight jacket formula. The various aspects like nature of the land, location of the land and purposes for which the land is being acquired etc., need to be taken into consideration. It is now well settled that market value is the price that a willing purchaser would pay to a willing seller for property having due regard to the existing conditions with all its existing advantages and its potential. In the present case, a proximity of the land from Mumbai-Puna

High-way and the development of industrial activity in Khopali Town cannot be overlooked. Considering all the circumstances, in my opinion, the court below has rightly awarded the compensation at the rate of Rs.30,000/- per acre as against the claim of the claimants of Rs.1,40,000/- per acre. In the circumstances, this submission of the learned AGP also fails and deserves to be rejected.

8. Insofar as the last submission of Mr Patil is concerned, it is squarely covered by the judgment of the Supreme Court in **Kashbai Bhikabai's case (supra)** and, therefore, the order awarding additional compensation at the rate of 12 percent as provided under section 23(1-A) of the Act of Rs.22,932/- deserves to be set aside. Order accordingly. After deducting the said amount from the amount of the compensation, that is, Rs.40,490/-, awarded by the impugned judgment, the claimants would be entitled to Rs.17,558/- only. I am informed that the State had deposited the entire amount of compensation after admission of the appeal on 29.12.1986 and the said amount was withdrawn by the claimants on 25.1.1987. In view thereof, the appellants to initiate the proceedings to recover the amount of Rs.22,932/- with interest at the rate of six percent per annum from the date of withdrawal from the claimants.

9. With these observations, the appeal is partly allowed. No costs.

(D.B.BHOSALE,J.)